LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
SEP 28 1971
E. ROBERT SEAVER, CLERK

No. 71-409

In the Supreme Court of the United States

OCTOBER TERM, 1971

ALONZO COLLINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-409

ALFORD COLLINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of West Virginia, petitioner was convicted of willfully refusing to submit to induction into the armed forces, in violation of 50 U.S.C. App. 462(a). He was sentenced to three years' imprisonment. The court of appeals affirmed *per curiam* (Pet. App. 7-8), and denied a petition for rehearing (Pet. App. 9).

The facts are not in dispute. Petitioner was classified I-A on January 15, 1967, and, on May 12, 1967, he was mailed an order to report for induction on May 23, 1967.

447-429——71

On the date he was scheduled for induction, petitioner for the first time filed with his local board an SSS Form 150 (Special Form for Conscientious Objectors), claiming an opposition to participation in war in any form. He then reported, as ordered, for induction but, when his name was called, he refused to take the symbolic step forward. Thereafter, petitioner's local board refused to reopen his classification; the present indictment and conviction followed, and the court of appeals, relying on the decision by this Court in *Ehlert* v. *United States,* 402 U.S. 99, affirmed *per curiam* (Pet. App. 7–8).

In *Ehlert,* this Court held that consideration of post-induction-notice conscientious objector claims is not to be undertaken by the Selective Service System; rather the appropriate forum for review of such claims is within the military after the registrant has submitted to induction. Petitioner seeks here, as he did below, to except himself from that ruling on the ground that his views had crystallized to the point where he could not in conscience submit to induction even for the limited purpose of obtaining an administrative review of his claim.

But, that same contention was made in *Ehlert* (see Pet. Reply Br., No. 120, October Term, 1970, p. 23); in response, this Court pointed out (402 U.S. at 102–103; footnotes omitted):

> The only unconditional right conferred by statute upon conscientious objectors is exemption from *combatant* training and service. * * * It does not follow, given the power to make reasonable timeliness rules, that a registrant

> has an unconditional right to present his claim to the local board before induction, any more than he has such a right after induction. Congress seems rather carefully to have confined the unconditional right created by the statute to immunity from combatant training and service. Consequently, requiring those whose conscientious objection has not crystallized until after their induction notices to present their claims after induction would work no deprivation of statutory rights, so long as the claimants were not subjected to combatant training or service until their claims had been acted upon. [Emphasis in original.]

Petitioner has an available forum within the military for review of his post-induction-notice conscientious objector claim without being subjected to any combatant training and service (see Army Regulation AR 635–20, para. 6a (July 31, 1970)). Requiring him to submit to induction in order to invoke the military review process does not conflict with any constitutional [1] or statutory rights he might have. The fact that he may choose not to pursue this course, whatever his reasons, does not legally make the military forum any less available to him than it was to Ehlert.[2]

---

[1] Exemption from combatant training and service is a matter of legislative grace; not constitutional right. See *United States* v. *MacIntosh*, 283 U.S. 605, 623–624; *Hamilton* v. *Regents*, 293 U.S. 245, 264; *In re Sommers*, 325 U.S. 561; *Welsh* v. *United States*, 398 U.S. 333.

[2] If the mere assertion by a registrant that he cannot in conscience submit to induction were sufficient ground for taking this case out of the *Ehlert* rule, the principle enunciated in *Ehlert* as to post-notice conscientious objector claims would, as a practical matter, have little or no application.

Indeed, in such circumstances, he stands on essentially the same footing as the individual who refuses even to register with his local draft board on the ground that his opposition to all wars is so strong that he cannot in conscience cooperate in any way with the Selective Service System.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

OCTOBER 1971.

U. S. GOVERNMENT PRINTING OFFICE: 1971